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IN THE
Supreme Court of the United States
OCTOBER TERM 1987

RELIANCE INSURANCE COMPANY,
Petitioner,

Vs.

GLADOS, INC.
A BANKRUPT FLORIDA CORPORATION
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES ELEVENTH CIRCUIT COURT OF APPEALS

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QUESTIONS PRESENTED FOR REVIEW

1. Does the Eleventh Circuit Court of Appeals' interpretation of Federal Rule of Evidence 803(8) (C) conflict with other Federal Circuits, because the Eleventh Circuit excludes from evidence official, public investigative reports even where they are found to be trustworthy by the district court?

2. Did the Eleventh Circuit Court of Appeals decision contravene the public policy of the State of Florida and ignore an issue of great public importance, by failing to pierce the corporate veil of a husband and wife corporate insured, and therefore allowing the individuals to commit arson and not cooperate with the insurer of the corporation?

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PETITION FOR THE WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The Petitioner, RELIANCE INSURANCE COMPANY, by and through its undersigned counsel, petitions this Honorable Court for a Writ of Certiorari to review the opinion of the United States Court of Appeals for the Eleventh Circuit in this case.

LOWER COURT OPINIONS

The middle District of Florida case styled GLADOS, INC. vs. RELIANCE INSURANCE COMPANY, Case No.: 83-535-CIV-T-15 was not officially reported, but a copy of that Court's Judgment, dated June 6, 1986, is attached in the Appendix to this Petition at App. 1. The

Eleventh Circuit Court of Appeals Case Number 86-3448 was also unreported but a copy of that Court's opinion is attached in the Appendix to this Petition at App. 3-9

GROUNDS FOR JURISDICTION

The opinion of the Eleventh Circuit Court of Appeals was rendered on September 29, 1987. A Petition for Rehearing was denied on November 19, 1987. (copies of the Orders denying Reliance's Petition for Rehearing and Suggestion for Rehearing in Banc are attached in the Appendix to this Petition, at App. 10 and 11, respectively). The jurisdiction of this court is invoked according to 28 U.S.C. Section 1254 (1).

STATUTORY PROVISION INVOLVED

Federal Rule of Evidence 28 U.S.C. App. 803, entitled Hearsay Exceptions; Availability of Declarant Immaterial states: (8) public records and reports.

> records, reports, statements, or data compilations, in any form of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the government in criminal cases, factual findings resulted from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

STATEMENT OF THE CASE

1. STATEMENT OF PROCEEDINGS AND DISPOSITION IN THE COURT BELOW

This case involves a claim for breach of contract; arising out of a restaurant fire that was intentionally set. The contract in question was an insurance policy issued to the Plaintiff, GLADOS, INC., by Defendant, RELIANCE INSURANCE COMPANY. After the claim was initially filed in the Sarasota County Circuit Court of Florida, it was removed to the United States District Court for the Middle District of Florida, (R 1-5), on the basis of complete diversity between the parties and the amount in controversy exceeding $10,000. *See* 28 U.S.C. Sections 1291 and 1332.

The trial commenced on April 21, 1986 with the visiting Honorable Judge John H. Moore, II, presiding. The jury returned a verdict for the Plaintiff and a Judgment was thereafter entered against the defendant for $356,281.25. After the defendant's Motion for Judgment Notwithstanding the Verdict and defendant's Alternative Motion for New Trial were denied, (R 3-117) defendant timely noticed the case for appeal on July 2, 1986. On appeal, the Eleventh Circuit Court affirmed the trial court's ruling in an opinion dated September 29, 1987. RELIANCE thereafter filed a Petition for Rehearing which was denied on November 19, 1987. (See App. 1-11).

2. STATEMENT OF FACTS

Plaintiff, GLADOS, INC. was formed on September 2, 1982 for the purpose of operating the GLADOS Restaurant business in Sarasota, Florida. This husband and wife corporation was owned and operated by

GLADYS and WILLIAM RAY ADDISON. GLADYS ADDISON was the sole stockholder of GLADOS, INC. and WILLIAM RAY ADDISON was the General Manager of GLADOS, INC., in charge of its day-to-day operations. The restaurant where the fire occurred was the only business of GLADOS, INC. and the restaurant was controlled and operated by GLADYS and WILLIAM RAY ADDISON.

Insurance policy number CI 5016010, was obtained by the ADDISONS for the restaurant from the Defendant, RELIANCE INSURANCE COMPANY. That policy lists GLADOS, INC. as the named insured, for the policy period of September 3, 1982 through September 3, 1983. A fire was intentionally set at the restaurant at approximately 4:30 a.m. on December 31, 1982. After this fire, RELIANCE INSURANCE COMPANY refused to pay the ADDISONS or GLADOS, INC. for their claimed fire loss. (R 4-20-21).

Public fire officials and a private cause and origin expert testified that this fire was intentionally set, with the use of an accelerant. (R 5-159, 223, 125-126). No evidence, other than the ADDISONS' denial, was offered to the contrary.

Additionally, an experienced investigator from the Sarasota County Sheriff's Department, with a college degree in Criminology, conducted a thorough investigation of this fire. He concluded that this fire was intentionally set by WILLIAM ADDISON. (R 5-187-189). However, the proffer of his testimony containing this conclusion was excluded from evidence by the district court. Also, the district court excluded from evidence this official investigator's detailed, factual and thorough written report prepared for the Sarasota County Sheriff's Department even though the report was noted to be trustworthy (R 5-182, 183, 198; a copy of said report is attached in the Appendix to this Petition at App. 12-45). A reading of that

report will clearly reflect the fraud that is the subject of this litigation.

During the course of its investigation of this claim, RELIANCE requested the only two principals of GLADOS, INC., WILLIAM ADDISON and GLADYS ADDISON, to submit to an examination under oath, as required by the insurance policy. The ADDISONS were requested to bring personal income tax returns and financial documents and records to this examination under oath; so that RELIANCE could conduct its investigation of their claim and evaluate the financial motive issue. Although the ADDISONS produced their official "corporate" records, they refused to produce individual financial records, including their personal tax returns and other financial records pertaining to their financial standing at the time of and before the fire. (R 4-57, 104). A representative of RELIANCE testified that it was essential to the insurance company's investigation to have these personal financial records for a proper evaluation of the motive issue. (R 5-42-43).

At the close of the plaintiff's case in chief, defendant moved for a directed verdict on the issue of the ADDISONS' lack of cooperation by refusing to produce their personal financial records at their examination under oath, and because the corporate insured was in reality, simply a husband and wife partnership acting under the guise of a corporation. (R 2-86, 3-87). The district court denied defendant's Motions, but not without reservation. The District court did note that the principals should not be allowed to hide behind the corporate veil in this case. (R 5-54, 55, 57).

During the remainder of this Petition, for the sake of uniformity and clarity, the Plaintiff/Respondent, will be referred to as either "GLADOS" or the "ADDISONS" and Defendant/Petitioner will be referred to as "RELIANCE".

CONSIDERATIONS FOR REVIEW

I. The decision of the Eleventh Circuit Court of Appeals in the present case is in conflict with decisions of other Federal Circuits on the interpretation of Fed. R. Evid 803(8) (C). Rule 803(8) (C) created an exception to the hearsay rule for factual findings resulting from public investigative reports unless those reports are untrustworthy. The District Judge below excluded from evidence the official public investigative report prepared regarding the arson in question despite recognizing its trustworthiness.

The Eleventh Circuit Court of Appeals has taken a restrictive interpretation of Rule 803(8) (C) despite the trend among other Federal Circuits for a liberal interpretation. The decision which set the standard for the Eleventh Circuit is *Smith v. Ithaca Corp.*, 612 F.2d 215 (5th Cir. 1980). Judge Johnson of the Eleventh Circuit in his special concurrence in *Rainey v. Beech Aircraft Corp.*, 784 F.2d 1523 (11th Cir. 1986), has concluded that *Smith* is an anomaly among the Circuits. In so concluding, Judge Johnson cited *Ellis v. International Platex, Inc.*, 745 F.2d 292 (4th Cir. 1984), which held that "it is well established that the phrase ("factual findings") should be interpreted broadly". *Rainey, supra,* at 1530, citing *Ellis* at 300-301.

The instant case should be reconsidered so that this Court can establish uniformity among the Federal Circuits for a broad and liberal interpretation of Fed. R. Evid. 803(8) (C).

II. The Eleventh Circuit Court of Appeals has interpreted the "cooperation clause" in RELIANCE'S policy in such a way that the public policy of the State of Florida is contravened and a matter of great public importance is ignored. It is well-accepted by the Florida Supreme Court, and throughout the country, that individuals should not be able to hide behind a corporate veil when the corporation is used to perpetrate fraud.

In the instant case, the principals of the corporate insured failed to cooperate in the investigation of a fire claim by concealing their personal financial information. Such a lack of cooperation and concealment is contrary to law and the insurance contract in the present case. This Court over 100 years ago in *Claflin v. Commonwealth Insurance Co.,* 110 U.S. 81, 29 L.E.D. 76, 3 S.Ct. 507 (1884) set forth principles which effectively make an insured's concealment the equivalent of fraud. This Court should not allow fraud to go unchecked in the present case. The investigation of fraudulent claims is already an expensive and difficult process for the insurer. A decision like the present one will only exacerbate the process. Ultimately, the insuring public will suffer the consequences of higher investigation expenses through higher premiums and less available property insurance.

REASONS FOR GRANTING THE PETITION

POINT ONE

THE ELEVENTH CIRCUIT COURT OF APPEALS' INTERPRETATION OF FEDERAL RULE OF EVIDENCE 803(8) (C) CONFLICTS WITH OTHER FEDERAL CIRCUITS, BECAUSE THE ELEVENTH CIRCUIT EXCLUDES FROM EVIDENCE OFFICIAL, PUBLIC INVESTIGATIVE REPORTS EVEN WHERE THEY ARE FOUND TO BE TRUSTWORTHY BY THE DISTRICT COURT

The Eleventh Circuit Court of Appeals' reading of Federal Rule of Evidence 803(8) (C) is in conflict with other Federal Circuits. *See: Rainey v. Beech Aircraft Corp.,* 784 F.2d 1523, *vacated and reh'g granted,* 791 F.2d 833, *reinstated,* 827 F.2d 1498, 1500 (11th Cir. 1987)

(Tjoflat, concurring specially). In *Rainey,* the Eleventh Circuit, in an evenly divided decision, held that prior precedent of the Eleventh Circuit, found in *Smith v. Ithaca Corp.,* 612 F.2d 215 (5th Cir. 1980) required the exclusion from evidence of evaluative conclusions and opinions. *Rainey,* 784 F.2d at 1530. This case gives this Court an opportunity to resolve the conflict between the Eleventh Circuit and other Federal Circuits on the issue of whether "factual findings resulting from an investigation," [Fed. R. Evid. 803(8) (C)] encompass evaluative conclusions derived from public investigative reports.

As this was an apparent case of arson, the Sarasota County Sheriff's Department called in Detective Ron Albritton to investigate this fire. (R 5-163). During the course of Detective Albritton's official investigation, he investigated the facts surrounding the fire and determined that WILLIAM ADDISON had set the fire. (R 5-187-189). However, the District Court did not allow into evidence this testimony, or the Sarasota County Sheriff's Department's official written report regarding this fire. (R 5-182, 183, 198). This ruling was made *even though* the trial court recognized the trustworthiness of the report.

GLADOS contented that much of Detective Albritton's proffered testimony, and the Sarasota County Sheriff's Department report, were inadmissible hearsay. However, Federal Rule of Evidence 803 (8) creates an exception to the hearsay rule for:

> records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth... (C) in civil cases and proceedings and against the government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

The Advisory Committee on the Rules found "the willingness of Congress to recognize a substantial measure of admissibility for evaluative reports." They also found that they were "a helpful guide" in determining whether findings going beyond observed facts should be admissible under Rule 803(8) (C). In determining whether the "sources of information or other circumstances" indicate lack of trustworthiness, the Advisory Committee Notes list four suggested factors for consideration: (1) the timeliness of the investigation; (2) the special skill or experience of the official; (3) whether a hearing was held on the level at which conducted, and (4) possible motivational problems. Note, *Advisory Committee on Rules of Evidence,* Rule 803. These factors were satisfied in the case at hand, and GLADOS presented no evidence at trial that would suggest that Detective Albritton's investigation was untrustworthy.

A literal reading of Rule 803(8) (C) hardly lends itself to the restrictive interpretation placed on it by the Eleventh Circuit. The Rule admits not merely "factual findings," but reports in their entirety as long as the reports are trustworthy and contain factual findings. After all, this hearsay exception is entitled "public records and reports," not "factual findings set forth in public records." *Rainey,* at 1510 (Tjoflat, specially concurring) *citing Zenith Radio Corp. v. Matsushita Elec. Indus. Co.,* 505 F.Supp. 1525, 1543 (E.D. Pa. 1980) ("the language of 803(8) (C) literally provides for the admission of entire agency reports so long as those reports include, *inter alia,* factual findings..."), *aff'd in relevant part,* 723 F.2d 238 (3rd Cir. 1983), *rev'd on other grounds,* 475 U.S. 574, 106 S. Ct. 1348, 89 L.Ed. 2d 538 (1986).

A "finding" is "a decision upon a question of fact reached as the result of a judicial examination or investigation by a court, jury, referee, coroner, etc." *Black's Law Dictionary* 569 (5th Ed. 1979). A finding "commonly applies to the result reached by a judge or

jury." *Id.* In other words, a "finding of fact" refers to the result of conclusion drawn by an investigator, whether it be a fire investigator, judge, or jury, "from facts without exercise of legal judgment." *Id.*

The common meaning of "finding" therefore comports with investigative conclusions (i.e., results derived from the examination of facts). The testimony of Detective Albritton in the instant case shows that statements of fact often represent conclusions in a fire investigation. Detective Albritton explains that it is a detective's job:

> ... since he's not there at the time of the crime, to try and determine as best he can what happened from what he can obtain. What he can obtain mainly comes through talking with other people, so therefore probably 95% of anything that I obtain will be hearsay as far as Rules of Evidence is concerned. What I can factually say is what I observed at the scene, which I am sure several other persons have testified to. I can testify factually to the problems that I had personal trying to make contact with Mr. ADDISON and talk with him, and the fact that I was not allowed to interview Mrs. ADDISON. There were suspicious situations that occurred by trying to make such contacts, which I personally did. These being that a man whose business has burned down has not made any attempt to contact me to find out what is happening with his investigation and why his building burned down or do I have any suspects. Instead, he is making no attempt to contact me and instead had retained an attorney.
>
> Now, as a trained investigator, I find that very suspicious. Perhaps that's my opinion. But I find it *factually* to be suspicious. (emphasis supplied) And if I disregard those things, then I'm not doing

> my job. Whenever I interview these people, I also make a determination from my experience as to whether or not they are telling me the truth or not and how much whether I can lay upon what they have told me. Again, it's hearsay to me, they're telling me, but then I have to weigh whether or not it is true as far as what is factual. (R 5-191-192).

The above statement by Detective Albritton is a prime example of investigative conclusions which constitute "factual findings." A copy of Detective Albritton's Investigative Report is attached in the Appendix to this Petition at App. 12-45

Examples which show that the Eleventh Circuit is in conflict with other Federal Circuits on the proper interpretation of Rule 803(8) (C) follow: A report on whether a state trooper who fatally shot a man who attacked him acted within the guidelines of the department's Policies and Procedures Manual, *See Perrin v. Anderson,* 784 F.2d 1040, 1046-1047 (10th Cir. 1986); a report on whether a state trooper acted contrary to department training when he attempted to handcuff a person while holding a cocked weapon, *See Wilson v. Beebe,* 770 F.2d 578, 589-590 (6th Cir. 1985) (en banc); a report on whether a crew member of a ship started a fight, *See Lloyd v. American Exports Lines, Inc.,* 580 F.2d 1179, 1182-83 (3rd Cir.), *cert. denied,* 439 U.S. 969, 99 S.Ct. 461, 58 L.Ed. 2d 428 (1978); and a report on whether a traffic light was green or red (there were no eyewitnesses) moments before an automobile accident, *See Baker v. Elcona Homes Corp.,* 588 F.2d 551, 554-59 (6th Cir. 1978), *cert. denied,* 441 U.S. 933, 99 S. Ct. 2054, 60 L.Ed. 2d 661 (1979). For examples of other Federal Circuit court cases which are in conflict with the Eleventh Circuit's interpretation of Rule 803(8) (C), see the attached list of cases in the Appendix to this Petition at App. 46-48.

In addition to the conflicts between the Circuits on the proper interpretation of Rule 803(8) (C), the Eleventh Circuit has seemingly disregarded the United States Supreme Court's reference to admissibility under the Rule. This Court noted that "[p]rior administrative findings made with respect to an employment discrimination claim may *of course,* be admitted as evidence at a Federal-Sector trial de novo. See Fed. Rule Evid. 803(8) (C)" (emphasis supplied) citing *Chandlier v. Roudebush,* 425 U.S. 840, 863 n. 39, 96 S. Ct. 1949, 1961 n. 39, 48 L.Ed. 2d 416 (1976) (citations omitted).

The Fifth Circuit in *Smith v. Ithaca Corp.,* made no reference to this Court's broad reading of Rule 803(8) (C). *See Cohen v. General Motors Corp.,* 534 F.Supp. 509, 512 (W. D. Mo. 1982) ("[I]t appears that the Supreme Court has given a broad directive for liberal use of agency findings, somewhat at variance with Judge Wisdom's cautious approach in [*Smith*].)

There are also important policy reasons why broad admissibility under Rule 803(8) (C) should be favored. "[B]road admissibility releases trial judges from the duty to draw sometimes arbitrary lines between fact and opinion, and focuses the court's inquiry instead on the trustworthiness and relevance of the reports in question." *Rainey v. Beech Aircraft Corp., supra,* 784 F.2d at 1530 (Johnson, J., concurring specially); see also Fed. R. evid. 704(a) "[T]estimony in the form of an opinion or inference otherwise admissible is not objectionable because is embraces an ultimate issue to be decided by the trier-of-fact").

Thus, consistent with the basic approach that opinions should be admitted when helpful to the trier-of-fact, (See Fed. R. Evid. 704, Advisory Committee's Note) trustworthy and relevant evaluative opinions should be admitted under the pubic records exception of Rule 803(8) (C), as long as jurors can ascertain the significant facts that form the basis of the opinion. *See* 4 J. Weinstein & M.

Berger, *Weinstein's Evidence,* 803-23 (1985). The jurors were not even given that chance in the present case.

POINT TWO

THE ELEVENTH CIRCUIT COURT OF APPEALS' DECISION CONTRAVENES THE PUBLIC POLICY OF THE STATE OF FLORIDA AND IGNORES AN ISSUE OF GREAT PUBLIC IMPORTANCE, BY FAILING TO PIERCE THE CORPORATE VEIL OF A HUSBAND AND WIFE CORPORATE INSURED, AND THEREFORE ALLOWING THE INDIVIDUALS TO COMMIT ARSON AND NOT COOPERATE WITH THE INSURER OF THE CORPORATION

The RELIANCE insurance policy in question, policy number CI 5016010, required the insured to submit to an examination(s) under oath. The policy also allowed the company to "Examine and Audit the Named Insured's books and records at anytime during the policy period...," as far as they relate to the subject matter of this insurance. Furthermore, the concealment or fraud provision in the policy provided, "this policy is void if any named insured has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance." This policy language, applicable case law, and public policy, formed the basis of RELIANCE'S lack of cooperation defense.

Over one hundred years ago in the case of *Claflin v. Commonwealth Insurance Company,* 110 U.S. 81, 95, 29 L.Ed. 76, 82, 3 S.Ct. 507 (1884), this Court explained the purpose of the examination under oath clause and its relationship to the "concealment or fraud" clause:

> The object of the provisions in the policies of insurance, requiring the assured to submit himself to an examination under oath, to be reduced to writing, was to enable the Company to possess itself of all knowledge, and all information as to other sources and means of knowledge, in regard to the facts, material to its rights, to enable it to decide its obligations and to protect it against false claims. And every interrogatory that was relevant and pertinent in such an examination was material, in the sense that a true answer to it was of the substance of the obligation of the assured. A false answer as to any matter of fact, material to the inquiry, knowingly and willfully made with the intent to deceive the insurer, would be fraudulent. If it accomplished its result, it would be a fraud effected; if it failed, it would be a fraud attempted. And if the matter were material and the statement false, to the knowledge of the party making it, and willfully made, the intention to deceive the insurer would be necessarily implied, for the law presumes every man to intend the natural consequences of his acts. No one can be permitted to say, in respect to his own statement upon a material matter, that he did not expect to be believed; and if they are knowingly false and willfully made, the fact that they are material is proof of an attempted fraud, because their materiality, in the eyes of the law, consists in their tendency to influence the conduct of the parties as interested in them, and to whom they are addressed.

However, it is not enough merely to provide that the insured must make a statement under oath. For that provision to have value, it must require the key individuals, who are in reality the insured, to be fully cooperative with

the insurer. The concealment or misrepresentation clause of the policy provides the necessary penalty if they fail to do so.

The courts also recognize that the concealment or misrepresentation clause has a broader application than just requiring honesty during the examination under oath. A fraudulent insured may also make intentionally false and misleading statements or refuse to disclose information or documents to the insurance company during its investigation of the claim. In *American Divers Supply and Manufacturing Corp. v. Boltz,* 482 F.2d 795, 798 (10th Cir. 1973), the court said:

> The effect of these fraudulent representations is the same whether they are made in a sworn proof of loss or an informal verbal discussion; that is, they violate the fraud clause and destroy the intended atmosphere of honest, good faith dealing in either case.

The requirement of honesty and good faith dealings between insureds and insurers is especially important in property insurance policies. When property and its contents have been destroyed by fire, some of the best evidence of the property's value is gone. The potential for fraud and abuse is great. The very nature of this type of insurance demands complete cooperation and disclosure of all pertinent information.

This is the basis upon which fire insurance policies have been written for over one hundred years. The exact language used for these clauses has varied from time to time. but the purpose and effect of these clauses and the way in which they interrelate has not changed.

WILLIAM and GLADYS ADDISON refused to produce records and information regarding their personal financial background, including their income tax returns,

while RELIANCE was attempting to investigate this loss. (R 4-57, 104). Without that information, RELIANCE'S investigation of this suspect arson loss was hindered, particularly with regard to the ADDISON'S financial condition and motive. (R 5-42, R 6-22).

On this point, the Supreme Court of Georgia held that an insured's failure to provide requested income tax returns is a material breach of the insured's contract. *See Halcome v. Cincinnati Insurance Co.,* 334 S.E. 2d 155 (Ga. 1985) An insured's failure to provide necessary documents for the investigation of a claim violates the insurance policy and renders the policy void so that no action can be sustained. *See Taylor v. Fireman's fund Insurance Co.,* 306 So. 2d 638 (Miss. 1975); *Happy Hank Auction Co. v. American Eagle Fire Insurance Co.,* 145 N.Y.S. 2d 206 (N.Y. App. Div. 1955); *Warrilow v. Superior Court of State of Ariz.,* 689 F.Supp. 377 (U.S.D.C. E.D. Mo. 1985); and *Stover v. Aetna Casualty and Surety Co.,* 658 F. Supp. 156 (S.D. W.Va. 1987).

There is no requirement that the insurer seek a Court Order compelling production of financial records or information, as was suggested by the trial judge in the case at bar. Such a requirement would do nothing to encourage cooperation between the insured and their insurer during the investigation of a claim. Such a requirement would also make the investigation of fraudulent claims even more expensive and difficult for the insurer, and eventually for all policyholders.

A recent North Carolina Appellate decision is directly on point with the case at hand. *See Chavis v. State Farm Fire & Casualty Co.,* 338 S.E. 2d 787 *rev'd on other grounds,* 346 S.E. 2d 496 (N.C. 1986) In *Chavis,* the court held that the steadfast refusal by the insureds to comply with State Farm's request to provide copies of their bank and loan accounts precluded their action against State Farm for payment under the terms of their fire policy. The court also found that the insured's financial condition was

clearly relevant to State Farm's arson defense, and State Farm had a right to inspect the requested records.

Much like the instant case, Mr. Chavis testified that he refused to sign a release of his financial information on the advice of his attorney and also because he felt that his business and financial records were "none of their business". *Id.*, at 790. In the present case, MR. ADDISON also refused to sign a release of financial information on the advice of his attorney, and also inquired as to what their personal financial situation had to do with this fire claim. (R 4-104). The appellate court in *Chavis* affirmed the lower court's ruling that granted State Farm's Motion for a Directed Verdict because the insured's refusal to cooperate was considered an insurmountable bar to the insured's claim.

The North Carolina Supreme Court recently reversed the Appellate Court decision in *Chavis, supra.* However, the reversal was not based on the insured's failure to cooperate, but rather it was based on the lack of specificity contained in the insurance company's request of financial records. The Court pointed out that "had [the] defendant's request for banking information been reasonably specific, plaintiffs would have been obligated to produce the requested documents." *Id.*, at 499.

With regard to the "personal" financial records and information of the ADDISONS, they argued in the lower court that the insured under the policy in question was a corporation, and because this corporation produced its "corporate" records, there was no failure to cooperate here. The lower court acknowledged its displeasure with this argument. (R 5-54-55), but nevertheless denied RELIANCE'S Motion for Directed Verdict on this issue. The trial judge's comments, however, indicate that this Motion should have been granted: "...(t)he corporation has to act through its officers, directors (or) agents, ...and (a)s far as I'm, concerned the evidence in this case leads only to one conclusion, and that is this was a husband and wife

operation period." (R 7-20). If these two people, who owned and managed this restaurant business, are not required to individually cooperate, openly, honestly and in good faith, with the insurer seeking to investigate "their" fire loss, "corporate" arson will not be deterred. This would be contrary to the public policy of Florida. *See* Florida Statute Sec. 817.234, which makes it a felony to intentionally conceal or misrepresent any material fact in support of any claim for insurance benefits.

The issue of the insured corporation being an alter ego of a majority shareholder was addressed in *United Gratiot Furniture Mart, Inc. vs. Michigan Basic Property Insurance Association,* 406 N.W. 2d 239 (Mich. App. 1987). The court in *United Gratiot* held that where the insured corporation's largest shareholder either set or procured the fire, his actions should be imputed to the corporation and the corporation's claim of coverage should be denied. *Id.*, at 240.

In *United Gratiot, supra,* the Court addressed this (fraud) issue by stating that "by using the corporate shield in this manner, the arsonist would retain and personally enjoy the benefits of the proceeds contrary to the equitable principles upon which our decision is based. Plantiff's suggested remedy is subject to too great of a potential for abuse." *Id.*, at 242.

In other cases involving "corporate" arson, the Fifth Circuit has held that a corporation will be denied recovery where a shareholder/officer vested with virtually exclusive management and control of corporate affairs was responsible for the arson. *See Vicksburg Furniture Mfg. v. Aetna Casualty & Surety Co.*, 625 F.2d 1167, 1170 (5th Cir. 1980) and *Cora Pub, Inc. v. Continental Casualty Co.*, 619 F.2d 482, 486 (5th Cir. 1980); *See also Dyno-Bite, Inc. v. Travelers Companies,* 439 N.Y.S. 2d 558 (N.Y. App. Div.1981), *Kisting v. Westchester Fire Insurance Co.*, 290 F.Supp. 141 (U.S.D.C. E.D. Wis. 1968),

A.L.R. 3d 1385, 1387 (1971), and 18 *Couch on Insurance 2d,* 74:671 (1968).

In *Dyno-Bite,* a "corporate" insured was denied recovery due to the failure of its key people to cooperate with the insurer. The Court in *Dyno-Bite* stated that:

> Plaintiffs, as corporations, necessarily cooperate or fail to do so because of the actions of their agents... if the officers' fail to participate in reasonable requests that they be examined concerning the loss, the corporation is properly chargeable with non-compliance. *Id.,* at 1397.

The only two key people in GLADOS, INC. were GLADYS ADDISON, its President, and her husband, WILLIAM RAY ADDISON, the General Manager. MR. ADDISON was clearly the commander-in-chief of the business, (R 4-47-55), and this restaurant business was operated as a partnership by the ADDISONS.

The Wisconsin case of *Kisting v. Westchester Fire Insurance Co.,* 290 F.Supp. 141 (U.S.D.C. E.D. Wis. 1968) lends further support to RELIANCE'S position here. In *Kisting,* the court held that an insured's refusal to answer questions during an examination under oath precluded recovery. The court noted that questions concerning the insured's income tax returns and whether he ever had income tax problems were material. *Id.,* at 148, 149. This is the very type of information sought by RELIANCE when the ADDISONS refused to disclose their personal income tax returns and financial records during their examinations under oath.

GLADOS, INC.'S argument hinges primarily on a strict construction of the insurance policy contract. Although policies of insurance are governed by contract law, a strict reading in this instance obviates public policy. As represented by the facts, the principals and only

shareholders of GLADOS, INC. include WILLIAM R. and GLADYS ADDISON. In reality, WILLIAM and GLADYS ADDISON are the insured corporation, even though not specifically named on the declarations page of the insurance policy itself. The corporation is a mere formality, and the corporate veil is appropriately pierced when the corporation is used to perpetrate fraud. *See Bendix Home Systems, Inc. v. Hurston Enterprises, Inc.*, 566 F.2d 1039 (5th Cir. 1978); *Aztec Motel, Inc. v. State ex Rel. Faircloth*, 251 So. 2d 849 (Fla. 1971); and *Vantage Review, Inc. v. Bali East Development Corp.*, 421 So. 2d 728 (Fla. 4th DCA 1982).

The refusal of the ADDISONS to produce their personal financial records without compulsion is a breach of the cooperation clause of the insurance policy. This lack of cooperation, and the fraud effected by the ADDISONS hiding behind their corporate veil, should not be rewarded by this Court.

CONCLUSION

RELIANCE INSURANCE COMPANY requests that this Court grant its Petition for a Writ of Certiorari so that this case can be heard on the merits.

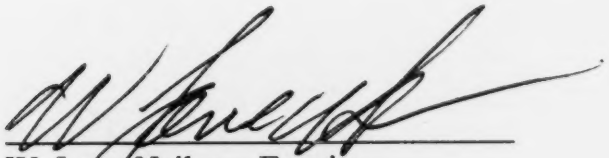
Respectfully submitted,

3/31/88
DATE

W. Lane Neilson, Esquire
NEILSON AND ASSOCIATES
135 W. Central Boulevard
Suite 200
Orlando, Florida 32801
(305) 843-6514
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing have been furnished by U.S. Mail to JERE M. FISHBACK, ESQUIRE, 150 2nd Avenue North, St. Petersburg, Florida 33701, on this 31 day of March, 1988.



W. Lane Neilson, Esquire
NEILSON AND ASSOCIATES
135 W. Central Boulevard
Suite 200
Orlando, Florida 32801
(305) 843-6514
Attorney for Petitioner

APPENDIX

Document(s)		Page(s)
1.	Copy of District Court Judgment, dated June 6, 1986	App. 1
2.	Notice of Appeal to the United States District Court, Middle District of Florida, dated July 2 1986	App. 2
3.	Copy of Eleventh Circuit Court of Appeals Opinion, dated September 29, 1987	App. 3-9
4.	Copies of Orders denying Reliance's Petition for Rehearing and Suggestion for Rehearsing in Banc, both dated November 19, 1987	App. 10,11
5.	Copy of Sarasota County Sheriff's Department Investigative Report, dated March 30, 1983	App. 12-45
6.	Citations to Other Federal Circuit Cases Interpreting Rule 803(8) (C)	App. 46-48

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case Number: 83-535-CIV-T-15

GLADOS, INC.,

Plaintiff,

Vs.

RELIANCE INSURANCE COMPANY

Defendant.

JUDGMENT IN A CIVIL CASE

X Jury Verdict, this action came before the Court for a trial by jury.

The issues have been tried and the jury has rendered its verdict.

IT IS ORDERED AND ADJUDGED that the Plaintiff, GLADOS, INC. recover of the Defendant, RELIANCE INSURANCE COMPANY, the total sum of $356,281.25 (including damages, prejudgment interest, attorneys' fees, and costs) together with post-judgment interest thereon at the legal rate as provided by law.

Date: June 6, 1986

Donald M. Cinnamond
Clerk

George W. Courson
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case Number: 83-535-CIV-T-15

GLADOS, INC.,

Plaintiff,

Vs.

RELIANCE INSURANCE COMPANY

Defendant.

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that RELIANCE INSURANCE COMPANY, Defendant above named, hereby appeals to the United States Court of Appeals for the Eleventh Circuit from the Final Judgement entered in this action on the 6th day of June, 1986.

I HEREBY CERTIFY that a true and correct copy of the foregoing had been furnished by U.S. Mail delivery to JERE M. FISHBACK, ESQUIRE, 150 2nd Avenue North, St. Petersburg, Florida 33701 on this 2nd day of July, 1986.

W. Lane Neilson, Esquire
NEILSON AND ASSOCIATES
135 West Central Blvd.
Suite 200
Orlando, Florida 32801
(305) 843-6514
Attorney for Defendant

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No: 86-3448

GLADOS, INC.,
A Florida Corporation
Plaintiff - Appellee,

Vs.

RELIANCE INSURANCE COMPANY
Defendant - Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

September 29, 1987

BEFORE: TJOFLAT and EDMONDSON, Circuit Judges, and Morgan, Senior Circuit Judge.

PER CURIAM:

This is an equal appeal from the breach of contract case. A jury found that the defendant had failed to pay a claim that was covered by the plaintiff's insurance policy with the defendant, and the defendant now appeals. We affirm the judgement below.

I.

The plaintiff, Glados, Inc., is a corporation formed for the purpose of operating a restaurant in Sarasota, Florida. Gladys Addison was the sole stockholder of Glados, and her husband, Bill Addison, was the corporation's general manager. The defendant, Reliance Insurance Company (Reliance), issued an insurance policy naming Glados, Inc. as the insured. The policy period was to last from September 3, 1982 through September 3, 1983.

A fire occurred at the Glados restaurant on December 31, 1982, and Glados subsequently made a claim under the policy's fire insurance coverage. Reliance investigated the fire, and concluded that the fire was intentionally set. Reliance refused to pay, claiming that Bill Addison had set the fire and that Glados had breached the policy by refusing to corporate with Reliance investigation. Glados then filed this suit. After a trial in which the facts were hotly disputed, a jury found in a special verdict that Addison had not intentionally caused the restaurant fire and had not willfully or frauduently misrepresented or concealed any material fact relating to the insurance claim. The jury gave Glados the damages it sought. The court thereafter denied Reliance's motion for a judgement n.o.v.or a new trial.

II.

Reliance first argues that the district court committed reversible error by allowing the jury to consider the testimony of Andreas Ameres, whom Glados called as a rebuttal witness following the presentation of Reliance's case in chief. Under the precedent of this circuit,"[t]o prevail on this issue, [Reliance] must show (1) that the district court abused its discretion in erroneously admitting the testimony and (2) that the admission of the evidence affected [Reliance's] substantial rights." *O'Donnell v. Georgia Osteopathic Hosp., Inc.*, 748 F.2d 1543, 1547 (11th Cir. 1984) (citations omitted). We find no abuse of discretion.

Ameres had been the prior owner of Glados' Restaurant, and had sold it to Glados in 1982. Ameres had also incorporated two other businesses, each of which operated a,restaurant (Grapevine Restaurants No. 1 and 2) in the Tampa Bay area. A was the case with the restaurant Glados bought, Ameres sold each of these other restaurants to a third party and took back a note as part of the purchase price. The notes involved in the sale of these restaurants, as well as that between Ameres and Glados, required that the purchaser insure the restaurant assets against fire loss and that corporations controlled by Ameres be named as an insured party. Following the sale of Grapevine Restaurants No. 1 and 2, a fire occurred at each facility. Relying on the security agreements, Ameres' corporations sought a share of the insurance proceeds.

A similar pattern of events occurred with regard to the Glados Restaurant. Several months after Glados purchased the facility, a fire caused the partial destruction of the building and equipment. When Glados sued Reliance to recover insurance proceeds, counsel for Ameres filed a motion to intervene, claiming entitlement to some of the money Glados was seeking. Ameres' counsel

counsel later abandoned the motion, allegedly without informing Ameres, and the trial court denied the motion.

Federal Rule of Evidence 404(b) prohibits the admission of evidence of "other crimes, wrongs, or acts... to prove the character of a person in order to show action in conformity therewith." Such evidence is admissible, however, for other purposes "such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Glados argues that the evidence of fires at other restaurants in which Ameres held a security interest is relevant to the issue whether Ameres had a plan or motive to set fire to the Glados Restaurant. We agree.

This case is unusual in that the evidence of extrinsic acts concerns a third party, rather than the plaintiff or defendant. *In United States v. Morano*, 697 F. 2d 923 (11th Cir. 1983) (per curiam), we faced an analogous situation, in which the district court allowed the Government to introduce evidence of prior fires set by a third party allegedly hired by the defendant to destroy his business. We held that "Rule 404(b) does not specifically apply to exclude this evidence because it involves an extraneous offence committed by someone other than the defendant." Id. at 926. Nevertheless, we decided that "the exceptions listed in the Rule should be considered in weighing the balance between the relevancy of this evidence and its prejudice under Rule 403." *Id.*

Reliance's primary defence to Glados' claim for insurance proceeds was that Bill Addison, with his wife's agreement, had intentionally set fire to their restaurant. Among other things, Reliance introduced evidence of the restaurant's poor financial condition to demonstrate a motive for arson, and elicited testimony that the Addisons had suddenly removed important documents shortly before the fire destroyed the office, implying that they had planned the fire. To counter this circumstantial evidence, Glados sought to show that it was not only the entity that

stood to gain from the destruction of the restaurant. To this end, Glados elicited testimony from Ameres that included descriptions of the other fires.

The purpose of the evidence that Glados introduced was clearly relevant to the issues in the dispute. In light of Reliance's defence that only Glados had a motive and plan for committing arson, Glados could logically rebut that argument by showing that a third party (Ameres) also had a motive and plan for the restaurant's destruction. Once that issue arose, we cannot say that the district court abused its discretion by concluding that evidence of similar fires was probative. *See generally United States v. Beechum*, 582 F. 2d 898, 911 n. 15 (5th Cir. 1978) (en banc).[2] Finally, although evidence of a pattern of fires at restaurants in which Ameres held an interest was obviously damaging to Reliance, we cannot say that its value was outweighed by an unfair prejudice. *See United States v. Williams*, 816 F. 2d 1527, 1532 (11th Cir. 1987) (excluding evidence under Rule 403 "is an exceptional remedy"). We conclude that the district court's decision to permit the jury to hear the evidence of the other fires was not an abuse of discretion.

Reliance also contends that the district court committed reversible error by refusing to admit into evidence the conclusion of Ronald Albritton, a police investigator, that Bill Addison had ignited the fire at issue. The court permitted Detective Albritton to describe to the jury his investigation and most of his conclusions, e.g., who had been in the restaurant just prior to the blaze and what he found in a safe in the office. In addition, Albritton testified that he had received very little cooperation from the Addisons during the course of his investigation. The court refused, however, to allow Albritton to testify that it was his conclusion that Bill Addison had intentionally set the fire.

We need not decide whether Detective Albritton's conclusion regarding the fire would be a "factual finding"

under a liberal reading of Fed. R. Civ. P. 803(8) (C) because binding precedent in this circuit takes a restrictive approach to that hearsay exception. *See Rainey v. Beech Aircraft Corp.*, 784 F. 2d 1523, 1528 (11th Cir.) (per curiam), *vacated and rehearing en banc granted*, 791 F. 2d 833 (11 Cir. 1986), *reinstated*, ___ F. 2d ___ (11th Cir. 1987) (slip op 4713, Sept. 22, 1987). Until overruled by a majority of this court sitting en banc, we are bound to follow the decision of the former Fifth Circuit in *Smith v. Ithaca Corp.*, 612 F. 2d 215 (5th Cir. 1980). Under that precedent, the district court was fully correct to exclude Detective Albritton's opinion. *See id.* at 220-23.

Finally, Reliance argues that the district court erred in denying its motion for a directed verdict. Reliance based its motion on its claim that Glados had breached a "cooperation clause" in the policy when Gladys and Bill Addison refused to turn over their personal financial records. We find no error.

The pertinent provisions of the insurance policy state that when a loss occurs, "the Insured shall ... submit to examination under oath" and that "(Reliance) may examine and audit the Named Insured's books and records at any time during the policy period and extensions and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance." The face of the policy lists only Glados, Inc. as the the "Named Insured," gives the restaurant address as the "Named Insured's Address," and describes the "Named Insured" as a corporation. Nowhere does the policy indicate that Addisons, in their individual capacity, are to be treated in the same manner as the named insured.

Reliance concedes that the Addisons complied with requests that they allow it to examine the corporate documents and records for Glados. It contends, however, that because Glados was wholly owned by Gladys Addison, the personal financial records of the Addisons

were highly relevant to Reliance's arson defense and were covered by the cooperation clause. We disagree. The insurance policy is between Reliance and Glados, Inc., a corporation. The language of the cooperation clause is unambiguous, and requires only the "Named Insured" to provide relevant documents to Reliance. Under the terms of this policy, we cannot conclude that the Addisons were obligated to provide their personal records.[3]

AFFIRMED.

---

1. Glados filed this suit in the state court, and Reliance removed the case to the district court, alleging diversity of citizenship jurisdiction. The trial of the case was then postponed because of a bankruptcy proceeding that is not relevant to this appeal.

2. In *Bonner v. City of Prichard*, 661 F. 2d 1206, 1209 (11th Cir. 1981) (en banc), this court adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981.

3. Reliance argues that the district court's jury instruction regarding whether Glados concealed or misrepresented any information related to the fire claim impermissibly increased its burden of proof. Assuming, *arguendo*, that this is so, the record demonstrates that any such error was harmless.

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No: 86-3448

GLADOS, INC.,
A Florida Corporation
Plaintiff - Appellee,

Vs.
RELIANCE INSURANCE COMPANY
Defendant - Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

ON PETITIONS FOR REHEARING
November 19, 1987

BEFORE: TJOFLAT and EDMONDSON, Circuit Judges, and Morgan, Senior Circuit Judge.

PER CURIAM:
The petition(s) for rehearing filed by Appellant is denied.

ENTERED FOR THE COURT:

United States Circuit Judge

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No: 86-3448

GLADOS, INC.,
A Florida Corporation

Plaintiff - Appellee,

Vs.

RELIANCE INSURANCE COMPANY

Defendant - Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

ON PETITION(S) FOR REHEARING AND
SUGGESTION(S) OF REHEARING IN BANC
(Opinion 10/13/87 , 11 Cir., 198___, _____F.2d_____).
November 19, 1987

Before: TJOFLAT and EDMONDSON, Circuit Judges, and MORGAN, Senior Circuit Judge.

PER CURIAM:

(√) The petition(s) for Rehearing/of appellant are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing in banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing In Banc are DENIED.

ENTERED FOR THE COURT:

United States Circuit Judge

INVESTIGATIVE REPORT
Sarasota County Sheriff's Department

INVESTIGATION AT: Sarasota Co., Fla.
DATE THIS REPORT: 3/30/83
PERIOD COVERED BY INVESTIGATION:
12/31/82 - to date

TITLE: GLADOS RESTAURANT
7275 S. Tamiami Trail
Sarasota, FL

CLASSIFICATION: SUSPICIOUS FIRE - 6
FIRE: 82-56225

REPORT MADE BY:
Det. R. Albritton #147 LMD (1)
DEPUTY SHERIFF
SARASOTA COUNTY
SARASOTA, FLORIDA

REPORT APPROVED BY:
JIM HARDCASTLE
SHERIFF OF SARASOTA
COUNTY
SARASOTA, FLORIDA

INDEX

SUSPECT

William R. Addison	W/M	DOB 6/4/40
1161 Lake House Circle		5'7", 145 lbs.
Sarasota, FL		Blu/Gry
EXCEPTIONALLY CLEARED		

12/31/82 - 0930 hours

Writer, detective on call, was advised by telephone by Communications of a suspicious fire at Glado's Restaurant, 7275 S. Tamiami Trail. Writer responded to the scene and was briefed by Criminalistics Tech. H. Sicks and South Trail Fire Dept. investigator Randy Coggan. A fire had occurred within the office area and has spread partially into the kitchen area before it was extinguished. The office was consumed by the fire. The fire had spread through the ceiling above the office. The entire building suffered smoke damage. Coggan advises the fired is of suspicious circumstances and arson is suspected. (see Coggan's report of the incident).

Writer spoke with Tim Hornes, Sonitrol Security Systems serviceman. He reports Sonitrol employee Ginny Borntrager was on duty at time of the fire. She made the following notations:

0412 hours	- received "code out" by owner, Bill Addison. - prior to code out Bontrager heard crackling and popping sounds over the monitor. - there was no fire alarm installed in the restaurant.
0425	- Bontrager could hear the sound of the fire very loud over the monitor.
0426	- she attempted to contact Mr. Addison at his home; no answer.
0432	- the monitor system went dead.
0434	- Bontrager called the cleanup man, Randy Foder, 1803 Marbeth St., 966-4128, W/M, 3/5/57; after attempting to call Addison at home.

Coggan advises the owner, Mr Bill Addison, arrived at the scene of the fire by approx. 0445 hrs. He had been contacted at My place Bottle Club on Siesta Key and told of the fire. He and his wife were very intoxicated. Mr. Addison was warned not to enter the premises. However, later he was found inside the building, unconscious. He had been overcome by smoke and was taken to Sarasota Memorial Hospital. He was placed in intensive care.

Coggan adds that two drawers to the filing cabinet in the office were found open. All the contents had been burned. He had checked the employee punch in/punch out time clock which is located just outside the south wall of the office. From looking at the time cards it appears the last to employees to clock out were Van Thorsen and Cheryl Thomas.

Randy Foder is the maintenance and cleanup man. He left yesterday afternoon at approx. 1700 hrs. with his live-in girlfriend, Missy White. She is the restaurant's bookkeeper. They arrived at the fire just after the firemen and used their key to let the firemen inside.

The owner, Bill Addison, sold his gas stations named "Purple Martin" in Michigan. He moved to Sarasota and bought the restaurant approx. 3 month ago.

1010 hours

Writer spoke at the scene with Miss Mary Ann "Missy" white, W/F, DOB 8/22/58 of 1803 Marbeth St., Sarasota, 966-4128. She provided the following information:
- the restaurant opened October 11, 1982.
- she answered an ad and applied for the job of

bookkeeper approx. 3 weeks after the restaurant opened.
- she had been the bookkeeper when the restaurant there was the Grapevine.
- she states the owner does not know much about the restaurant business.
- the owner does smoke cigarettes moderately.
- the file cabinet does not lock but she always keeps it closed.
- the door to the office automatically closes and locks when you walk through it.
- people with keys who frequently come and go through the office is herself, and Mr. and Mrs. Addison.
- other only come into the office as necessary.
- she estimates that there was approx. $7,000 in the safe.
- she was called by Sonitrol and told of the fire, after they could not get in touch with the owner. She thought he may be at the bottle club as she called there and did notify Mr. Addison of the fire.
- she and Foder then went to the fire scene.
- Foder used his key to let the firemen inside.
- in the file cabinet drawers should be the following:
  - top drawer - application forms and payroll stubs from each week.
  - 2nd drawer - receipts of all bills that have been paid.
  - 3rd drawer - Visa and Mastercharge drafts, office supplies. and an adding machine that needed repair.
  - 4th drawer - employee uniforms.
- the restaurant's tax information went to "Linda" at Accounting
Associates near Gulf Gate Mall. Most tax records had already been sent to her and she should have copies.

- Linda was to meet with Mr. Addison on Monday regarding
  this years taxes.
- large items that should have been in the office was the safe, file cabinet, 2 desks and another file box containing all bills yet to be paid.

As the building could not be secured, Writer suggested to White that she have the safe opened and if the contents are still of value, that she take them to the bank.

Called to open the safe was Ken Kling of AAA Locksmith. He stated he had worked on this safe when the restaurant first opened. He noted the spindle on the safe was plastic but the handle was metal. As it was found on the floor beneath the safe, Kling states it should still be on the safe. Possibly it was forced off.

As it will take hours for Kling to open the safe without damaging the contents Writer instructed him to notify Sheriff's Dept. when he was getting near to opening it. This way witnesses could be present as the safe is opened.

1530 hours

Kling was near to having the safe opened and the following persons were present to see the safe opened:

- Mrs. Addison, Missy White, Randy Foder, Kling, Larry Kelley (restaurant employee), Capt. Coleman and Inspector Coggan with South Trail Fire Dept., Dep. H. Sicks, Writer.

The interior of the safe was immediately photographed by Dep. Sicks. Although some contents were browned, nothing was destroyed.

The contents were removed from the safe and counted before all the above witnesses. Money inside included the following:

- the waitresses $20 "banks" (Cheryl's, Diane's and Suzi's).
- rolled coins of $70 in quarters, $70 in dimes, $44 in nickles, and $4.50 in pennies.
- 4 cash drawers to cash registers. Each is supposed to contain $150 even but were found to contain 1) $150.00, 2) $150.00, 3) $148.75 and 4) $130.00.
- $333.30 in two Mastercharge receipts from last night's money bag.
- $365 paper money plus $1.44 coin from the dining room bag from last night.
- $158.50 from the last nights bar money bag.
- $180 cash for the New Year's Eve party receipts.
- 90 checks.
- $52 from a second bar bag from last night.
- $9.75 in money owed by employees for mistakes in adding up customers bills.
- approx. $12.00 coin from the vending machines.
- the petty cash box which contained: $20, $90 and $22.77, $20 in "paid out slips", $300 in stacked bills plus $27.78, plus $10.73, plus $1.57 in receipts (separate groups of money) plus $49 in bills plus $2.50 in coin.

Writer then spoke with Mrs.Gladys Addison, W/F, DOB 5/23/43 of 1161 Lake House Circle, Siesta Key, 349-5024. Her husband is William "Bill" Addison, W/M, DOB 6/4/40. Together, they own and run Glados Restaurant.

When asked about the closing of the building she advised the following:

- the building was closed up at approx. 0400 hrs. this morning.
- the last three people present who closed up were her, Mr. Addison and Frank Broomfield, the dining room manager.
- all three left together and went to the Bottle Club on Siesta Key.There they got the call from Missy White advising them of the fire.
- she states no one was in the office after 0230 hrs.
- the clock above the bar is reset each day. It stops each night when the electricity to the bar room lights are shut off. Thus, the time on that clock indicates the time the electricity was shut off (0404 hours).

1/3/83 - 1600 hours

Writer spoke by telephone with Dick Meredith, supervisor of Sonitrol Security Systems. His employee, Ginnie Bontrager recalled to him that William Addison (Sonitrol Security #8202) coded out of the restaurant at 0412 hrs. on 12/31/82. However, the door light did not go off (indicating Addison actually left the building and shut the door) for approx. another four to five minutes.

Just minutes later she heard loud crackling and popping noises over the monitor. At 0425 hrs. she telephoned for South Trail Fire Dept.

Meredith furnished Writer with the restaurant's closing code out times for the past month. This is to establish if it was usual or unusual for a closing to occur after 0400 hrs. The closing times are indicated below. Those dates

where Addison was the actual person coding out (as opposed to some other employee) is so noted.

DATE	TIME	DATE	TIME
12/31/82	0412 (Addison)	12/21/82	0120 (Addison)
12/30/82	0054	12/20/82	0123 (Addison)
12/29/82	0315 (Addison)	12/19/82	none
12/28/82	0238 (Addison)	12/18/82	0228
12/27/82	0002	12/17/82	0345 (Addison)
12/26/82	2323	12/16/82	0313 (Addison)
12/25/82	0119	12/15/82	0320 (Addison)
12/24/82	0056	12/14/82	0221 (Addison)
12/23/82	0137	12/13/82	0125
12/22/82	0056	12/12/82	0223 (Addison)
12/11/82	0213	12/06/82	0030
12/10/82	0229 (Addison)	12/05/82	2327
12/09/82	0220	12/04/82	0249
12/08/82	none	12/03/82	0217
12/07/82	0046	12/02/82	0234

1/4/83 - 1000 hours

Writer again spoke spoke by telephone with Dick Meredith of Sonitrol. He advised Writer the Following information from a report prepared by Ginnie Bontrager:

0412 hours - she received "code out" call from Mr. Addison. He said he'd be leaving within 10 minutes.

0412-0420 - She had the monitor and alarm system activated. Heard conversation between 2 or 3 people, one of which at least was a

female. Saw the exterior door light come on and go off twice (indicating probably two went outside).

approx. 0425 - heard no moe voices; could hear someone moving about. Saw third and final door light. (door opened then closed). Heard faint crackling and popping sounds, similar to the sound of a "smoke eater". However, it got louder and louder. Bontrager realized it was not a fire eater and strongly suspected a fire. She called the restaurant in case Mr. Addison would hear the telephone and come back inside. No answer.

0426 hours - she telephoned Addison's home. His daughter answered, said he was not home yet.

0429 hours - strongly suspected it was a fire now and advised Sarasota Sheriff's Dept.

0430 hours - she heard over police monitor, zone 3 dispatched to the scene.

0430 - 0432 - she called Addison's home again and left word there was a fire and Sheriff's Dept. had been dispatched.

0432 hours - the system went dead (consumed by fire). Heard the deputy over the police monitor. Advised there was in fact a fire.

0433 hours - Bontrager attempted to phone employee David Abbott. No answer at his number.

0434 hours - employee Randy Foder was contacted and told of the fire.

0437 hours - she again tried the Addison residence; no answer.

0516 hours - Foder called Sonitrol to advise Mr.

Addison had been contacted and was now at the scene. The fire is under control.

1/4/83 - 1045 hours

W/F, Bobby Hannon, the owner of Bobby's Plants Unlimited, telephoned Writer. She stated she has a contract with Glados Restaurant to provide the live plants inside the business. She was concerned about being able to attempt to salvage any of her plants if possible. Hannon states that until this past month, the restaurant was good about paying their monthly rental bill. However, the $170.00 bill due on 12/24/82 has yet to be paid.

In all she has $660.00 worth of plants in the restaurant and will be needing compensation. Writer instructed her to contact Addison about going into the business to retrieve her plants.

She attributed the failure to pay their bill to poor business. Hannon noted that the Addisons had been pouring alot of money into the business but it was doing poorly.

1345 hours

Writer spoke by telephone with David Irons, claims representative for Reliance Insurance, Co., Atlanta, Ga, 1-800-241-2013 (813) 879-7444. (404) 262-2820. He advised Glados Restaurant was insured by his company through a local agency, Nicholas and Cannon Insurance, #1 N. Tuttle Ave., Name is to Glados Inc., insured on 9/3/82, policy #915016010.

There is 310,000 property damage insurance, plus $5,000 additional expenses plus 10,000 per month, up to 6 months for loss of business operations insurance.

Insurance premiums are $453.00 per month and have been paid up to date.

Irons explained the above is only for the business within the building. The physical structure is owned by Steve and Penelope Patapis of New York. It is insured for $460,000 plus $5,000 additional expenses, insured as of 9/3/82 under policy #CI5020619.

Patapis' business telephone is (516) 921-1616 and home telephone (516; 938-4890. His address is 950 Roxton, Plainview, New York.
Andrew Shaw is the local attorney representing Patapis. Patapis is the building owner only and formerly owned the Grapevine Restaurant at that same location. Irons provided the following information about the business:

- it opened on Oct. 11, 1982
- it is a corporation business with Gladys Addison the only corporate officer and 100% stockholder.
- Bill Addison is listed as general manager.
- from October, 1982 the business grossed $37,000.
- for November, 1982 the business grossed $50,000.
- for December, 1982 the gross is unknown but deposits were made into Gulf National Bank in Gulf Gate.
- Irons has talked with Mr. Addison who gave the following information:
    - he can only think of one disgruntled, employee, a cook named Kevin Coxe.
    - he closed the bar at 0230 hours and took the cash

box into the office.
- he was the only one to go into the office.
- in Southfield, Michigan, Mr. Addison had a gasoline distributorship.
- he mentioned in next couple of days he will be leaving for Michigan on business.

1/11/83 - 1345 hours

Writer telephones the Addison residence. Mr Addison's daughter answered and stated her parents are now in Michigan. They will return in approx. 1 1/2 weeks.

1/17/83 - 1630 hours

Writer went to Sonitrol Security Systems, 13 East Ave. and served Instanter subpoena for the records relating to Glados Restaurant on 12/31/82. Writer was given copy of the log sheet which contained this information. Also received were the hand written notes and report prepared by Virginia Bontrager who was monitoring the system at time of the fire at the restaurant. Writer later placed these original documents (and the copy of the log sheet) into evidence under P#23244.

1/18/83 - 1650 hours

Writer spoke by telephone with Randy Coggan of So. Trail Fire Dept. He advised Mr. Addison is now back in town.

1710 hours

Writer telephoned Mr. Addison. He agreed to come into this office tomorrow for an interview.

1/19/83/ - 1230 hours

Writer telephoned Addison's home and spoke to his daughter. She said he was at his attorney's office but was due back in about an hour. She will have him telephone Writer upon his return.

1600 hours

Writer telephoned Addison's home and business; no answer at either.

2015 hours

Writer telephoned Addison's home and business with negative results.

1/20/83 - 1415 hours

Writer spoke by telephone with William Addison. He stated he would not come into the office for an interview. He told Writer that any matters should be handled through his attorney, Mr. Wolf at 366-9444.

1430 hours

Writer Spoke by radio with Randy Coggan. Last evening fire commissioner Charles Lacy overheard Mrs. Addison in the O'Leary Bar (Gulf Gate Mall) bragging that she had taken and passed a polygraph (talking of the fire at the restaurant).

1445 hours

Writer telephoned Mr. Wolfe's office, 366-9444. He was busy. Secretary will have him return Writer's call.

1500 hours

Writer spoke by telephone with Det. Cathy Wark of the Southfield Police Dept., Southfield, Michigan. She has nothing about William Addison in her records. She advised the Purple Marting Gas station is now called Eight Sherman's Service at 2364 Eight Mile Rd., Southfield, Michigan. The phone number is (813) 355-2763.

1605 hours

Writer received message that Attorney Roger Wolfe, representing Mr. Addison, telephoned to say Mr. Addison will be in his office tomorrow morning. At that time he will decide if he will allow his client to be interviewed by Writer.

1/21/83 - 1430 hours

Fire Inspector Coggan had earlier advised Writer that a previous employee of Addison, W/F, Paige Watson has been heard to tell that the Addison's had a bad verbal argument at the My Place Bottle Club on 10/31/82.

Writer went to Watson's residence, 3900 S. Lockwood Ridge Rd., Apt #4 no phone but can be reached occasionally at a friend's at 921-3771). Writer spoke with Watson's roommate, Brady. She advised Watson has left for the afternoon but should return approx. 1800 hrs. today. Writer left a card with Writer's name and telephone number. Cindy stated she would tell Watson to telephone Writer.

1500 hours

Writer spoke with Terrance "Tv" Hannon, owner of My Place Bottle Club, 1300 Old Stickney Pt. Rd., 349-6433. Present with him was Terry Stratton, W/F, employee. This interview took place at the Bottle Club. Hannon and Stratton recalled the following information about Mr. & Mrs. Addison:

- the Addisons are members of the Bottle Club and they are on a first name basis with the Addisons.
- the Addisons were in the Bottle Club late Thursday night (actually Friday morning, 12/31/82).
- with them was a man who had never been in with them before believed to be Frank Broomfield).
- They had been in the Bottle Club approx. 5 minutes, 10-15 minutes maximum when Missy White called and asked for Mr. Addison to advise him the restaurant was on fire.
- they had brought beer with them but did not have time to finish the first one before Missy White called.
- describing their level of intoxication stated Mr. Addison was "maintaining". Mrs. Addison is hard to tell as she is "always hyper anyway."
- They (Addisons) have argued at the Bottle Club before but did not on this occasion.
- prior to the fire the Addisons averaged coming to the Bottle Club about twice a week, usually on their way home from the restaurant.
- since the fire they have not been back in the Bottle Club.
- they had been coming into the Bottle Club since before the restaurant ever opened.

- Mr. Addison owes a $18.00 bar tab at the Bottle Club.

1/21/83 - 170 hours

Writer interviewed Missy White and Randy Foder at their home. White advised that she suspects Mr. Addison of setting the fire. She knows of several suspicious incidents by Mr. Addison prior to the fire.

These issues were discussed. White agreed to come into office for a tape recorded interview early next week when time permits more detailed accounts regarding her information.

1/24/83 - 1000 hours

After receiving return phone call from Paige Watson, Writer met with her at her home, 3900 S. Lockwood Ridge Rd. Apt #4. Watson is W/F, DOB 3/13/65, no telephone. Present at this interview was Randy Coggan, Fire Inspector with So. Trail Fire Dept. Watson provided the following information:

- When Glados opened she first worked as a hostess/cashier. However, she recently went to work as a "kitchen prep." because of more hours. She worked there until the fire closed the business.
- the day before Mr. Addison went to Michigan, she went to the restaurant to pick up her pay check. At that time Mr. Addison mentioned he expected to be back open for business in 6 to 8 weeks.
- the Addisons were "really strange people".
- there was always people quitting or being fired because of personality conflicts with the Addisons.
- the Addisons would "pick" at people frequently whom

they did not like.
- on such employee who quit because of this was "Kevin" last name unknown.
- David Abbott, the cook, had given his two week notice prior to the fire because of conflicts with the owners.
- Watson described the business at the restaurant as "very bad".
- the restaurant was open 4:00 to 10:00 P.M. Watson recalls one evening approx. one week before the fire there was only 18 dinners served all evening.
- she states only the grand opening day was a good (busy) night at the restaurant.
- she recalls one day Mr. Addison said the costs and pay for employees were far beyond the income.
- she states it was obvious the Addisons knew nothing about the restaurant business.
- she believes the Addisons had David Abbott telling them all the time how they should do things (as he had been in the restaurant business a long time).
- Watson knew there was alot of food in the coolers. Much food went to waste because the food was being prepared but not sold.
- There was a high turnover of employees because most had conflicts with the owners. Many quit to find other jobs.
- many of the servers had quit because there were so few customers they made little money since most of their income is from tips.
- Watson described Mrs. Addison as moody, impulsive, strange, unstable, especially when she was drinking. Alcohol affected her badly. She would get loud, yelling and would argue with Addison in public.
- she described Mr. Addison as "milder" but "strange"; drinking or not.

- both often drank in the bar after the restaurant closed.
- Watson recalls the office was always kept very neat, although if the desks were moved around often.
- her opinion is Mr. Addisons set the fire to the restaurant.
- Addison's daughters have told Watson about their parents having physical fights and bad arguments. Specifically, Mr Addison has been scratched up and on one occasion Mrs. Addison was kicked in the head.
- Watson knows Frank Broomfield used to work at the Red Lobster as manager before working at Glados. He was fired at red Lobster for coming to work drunk. He was the dining room manager at Glados.
- Broomfield used to argue with David Abbott, the chef, alot.
- Mr. Addison often interfered with them.
- once Mr. Addison seemed displeased with all the time he had to work at the restaurant. He commented that he could not get to the beach because he was always working.
- David Abbott told Watson about a week before the fire, that he did not think the business could last another month (because business was so bad).
- Vince, a member of Freespirit band that played at the restaurant, once told Watson that Addison told him that he (Addison) had enough crooked lawyers up north to get him out of anything.

Watson does not know Vince's last name but now the band is at the Venice holiday Inn playing under the name of Primetime.

- Another waitress, Sharon Taylor who lives at Place Seville Apts., has been told stories by Addison's

daughter about how Mr. & Mrs. Addison fight.

1/24/83 - 1110 hours

Writer and Fire Inspector Randy Coggan (So. Trail Fire Dept.) interviewed W/M, Frank Broomfield at his home, 6841 Halfmoon Dr., 922-4083. He provided the following information:

- on the night of the fire, Broomfield went to the bar at Glados at approx. 0100 hrs., 12/31/82.
- at approx. 0230 hrs., Mr. Addison took the bar money to the office.
- Broomfield admits he was very intoxicated.
- He left his automobile at the restaurant and rode with Mr. & Mrs. Addison to the Bottle Club. Mr. Addison then received a call from Missy White saying the restaurant was on fire.
- Broomfield states they all left the lounge for the Bottle Club together.
- Broomfield states he started working at Glados in November as the dining room manager. He replaced Joe Mehle.
- Mr. Addison is a good business man but knows nothing about the restaurant business.
- business had not been good. Since taking over the dining room Broomfield says there has been no increase in business but he has decreased the operating expenses, thus reducing the losses.
- Both line cooks had quit work due to problems with management.
- there were a couple of "bad weeks" (business) in December but that is to be expected.
- he knows the office was always kept neat and clean.

- Mr. & Mrs. Addison always used a Bic lighter to light their cigarettes.
- Mr. Addison is not the kind of person who walks away and leaves a cigarette in an ash tray. He always has his cigarette in his mouth or hand.
- he last saw Mr. Addison last Wednesday.
- Addison told him to look for another job but he'd like to have Broomfield back if he reopens the restaurant.
- Broomfield states he has not been paid any salary by Addison since the fire.
- he had been given the impression from Addison that he (Broomfield) would be kept on salary until the restaurant reopened. Then Addison told him after coming back from Michigan that if another opportunity came along for him (Broomfield) to take it.
- Broomfield recalls that the night of the fire (Thursday, 12/30/82) the restaurant served approx. 100 dinners which means an intake of approx. $1000.00 for the dining room.
- prior to leaving for Michigan, Addison told Broomfield that they (Mr. & Mrs. Addison) were going back to Michigan to "get away after the fire" and to close on the sale of one of his gas stations for $162,000.

1/24/83 -1240 hours

Writer and Fire Inspector Randy Coggan spoke with Sharon Taylor at her residence, 3230 Granada Drive, Apt. 227, 923-2974. Present were her roommates Gina White and Donna Paulsen. All three are now waitresses at Red Lobster on S. Tamiami Trail, Sarasota.

Taylor advised she was a waitress at Glados from the opening day until the fire. She stated business was very

bad. Her salary was $2.01 per hour plus tips, the usual pay for a waitress. However, she did not make much money due to the low volume of customers. Taylor stated on most evenings she estimated the restaurant only served approx. 50 dinners. On a very good night there was only about 100 people served.

Taylor seemed reluctant to talk about the fire and the people involved. When asked her opinion about the incident she only smiled and stated "I don't know."

Taylor did state she has heard stories about Mr. & Mrs. Addison fighting but she personally has not witnessed same. She has been told this by Addison's daughter who now is also a waitress at Red Lobster.

1/31/83 -0900 hours

Mr & Mrs. Addison arrived at Sheriff's Dept. for interview. They were accompanied by Attorney Roger Wolfe. Writer requested to speak with Mr. Addison first and have Mrs. Addison wait in the lobby. Mr Addison was interviewed in interview room with his attorney present. Following Miranda Warnings, Addison gave the following information:

- the following persons were in the bar at the restaurant Thursday night after the restaurant closed (12/30/82).
  - Frank Broomfield, the dining room manager, employed approx. 3 weeks.
  - Van Thorsen, the bartender, employed approx. one month.
  - Kelley Whapam, waitress, employed since restaurant opened on Oct. 11, 1982.
  - Cheryl Thomas, waitress, employed since

restaurant opened on Oct. 11, 1982.
  - Howard Rogers, dishwasher
  - Mr. Addison
  - Mrs. Addison
- the bar closed at 0200 hours to get the customers out by 0230.
- Addison went to the office at 0230 to put the money from the bar in the safe. This was the only time he went in the office that night.
- all employees knew a knife or spatula could be used to pick the lock to the office door.
- persons with combination to safe:
  - Mr. & Mrs. Addison, arrived at restaurant 12/30/82 at approx. 1300 hrs., did not leave until approx. 0200 hrs.
  - Missy White, bookkeeper, left restaurant approx. 1800 hrs.
  - Clark Pennington, came in the bar about midnight, stayed until approx. 0300 hrs.
  - Dwight Davis - employee who quit about two weeks prior to the fire. He was not in the restaurant or bar the night of the fire.
- while they were in the bar all doors to the restaurant were locked except the north door to the lounge.
- Addison advises the only flammable fluids he knew of in the restaurant were sterno (used for heating hors d'oeuvres) and lamp oil for the oil burning candles that were on each table.
- the chef David Abbott kept the sterno stored. Addison states he did not know where. The lamp oil was stored in storage room, north-east corner of the building.
- the oven and grill ran on LP gas. Gas was stored in a 1,000 gallon tank, underground in back of the restaurant. Only the gas people had key to the tank.

- Addison states he would suspect Steve Patapis of setting the fire or having it set. He is the actual owner of the building the restaurant is in. He built the building and opened a restaurant. It closed down. Then the Grapevine was opened up afterwards. Addison bought the business after the Grapevine closed.
- Patapis' attorney is Andy Shaw.
- Addison thinks Patapis wants him out of the restaurant so he (Patapis) can open a restaurant again.
- Addison received eviction notice from Patapis on 1/14/83 for Addison to vacate the premises.
- Andy Ameras, owner of the Grapevine Restaurant before it closed. He still owns the Grapevine in Bradenton. He sold Addison the lease and equipment to the restaurant. Ameras got a lump sum of money plus $100,000 to be paid over the next 10 years.
- Addison states he, Mrs. Addison and Frank Broomfield were the last to leave the restaurant. They left together at approx. 0400 hrs.
- the others had left approx. 5 minutes prior.
- all doors have deadbolt locks.
- Mr. & Mrs. Addison drove to the Bottle Club on Old Stickney Pt. Rd. (Siesta Key).
- They had not been there more than 15 to 20 minutes before Missy White called to say the restaurant was on fire.
- Frank Broomfield, who had ridden to the Bottle Club with the Addisons, rode back with them to the fire.
- Randy Foder and Missy White were there and the fire dept.
  when the Addisons and Broomfield arrived.
- Mr. Addison asked a fireman where the fire was. He was told it was in the kitchen area.
- after about 30 minutes he thought the fire was out. The

front door was unlocked by firemen so he went in where it had burned and what was damaged. It was then he was overcome by smoke inside and taken to Sarasota Memorial Hospital.

- Addison stated the last night open (Thursday, 12/30/82) was a very busy night.
- for the New Year Eve's party Addison said he expected "a full house".
- He stated some tickets were sold in advance but he did not know how many. There were some reservations made. Then tickets would be bought when the people arrived.
- regarding insurance on the restaurant Mr. Addison stated the insurance company would not write a policy for the amount of insurance he asked for -$700,000. Instead he got a policy for $460,000 plus $310,000 on equipment, plus $10,000 per month up to six months for business interruption.
- Addison states he got out of the hospital on Saturday (day after the fire).
- he left to go to Michigan on business on 1/??/83 and returned on 1/16/83.
  (Note: Addison stated Mrs. Addison went with him but he did not mention that Missy White and Randy Foder also went).
- Addison states that he had been in the gasoline station business. He had sold some of the businesses and still had some.
- Addison states he still has business interests in Michigan.
- He states he has no business problems in Michigan.
- Addison states he has been married to Mrs. Addison for 24 years. He admits they fight.
- Addison states his only arrest is here in Sarasota for

when she had him arrested for spouse battery.
- Mr. Addison retained Mr. Wolfe approx. 1/5/83.
- he gave a statement to the insurance company after his return from Michigan.
- Addison states he had found a padlock cut to the garage door, north side of restaurant. He does not know how long it has been cut.
- Also, the emergency door alarm is not working. Addison states this alarm is to go off automatically if the door is opened. Writer suggested the firemen probably disconnected this alarm when all doors were opened on the day of the fire to let out heat and smoke.

Following this interview Writer was not allowed to interview Mrs. Addison. Attorney Roger Wolfe set a time of 1000 hrs. Wed, 2/2/83 for her to be interviewed. (Thus preventing Mrs. Addison from possibly saying anything contradictory to Mr. Addison).

Mr. Addison expressed desire that Writer hurry this investigation so that he could get on with this and settle with the insurance company.

Writer then asked Mr. Addison if he would take a polygraph examination. He said he would not take a polygraph because he does not like them. "I've been watching a lot of TV."

Attorney Wolfe interrupted and told Writer he will be back in touch about the polygraph after he talks with his client.

2/1/83 - 1400 hours

Writer received a letter from Mr. Wolfe that Mrs. Addison will not be interviewed nor will Mr. Addison take a polygraph exam.

1405 hours

Writer called Mr. Wolfe's office and was told he was with a client. Writer left the message for him to call Writer.

1600 hours

Writer sent copy of above described letter to Mr. David Irons, claims representative for Reliance Insurance Co.

2/7/83 - 1330 hours

Writer went to the home of Frank Broomfield and was advised he is at the Gingerbread Man Bar in Gulf Gate.

1335 hours

Writer located Broomfield at the Gingerbread man bar. He requested to talk with Writer at length regarding the Glados fire as he felt he was being looked at as a suspect. Writer and Broomfield drove to Sheriff's Dept. for interview. While enroute, Broomfield stated he had nothing to do with the fire in any way. He stated that if he was a suspect he would like to take a polygraph to clear his name. Broomfield had just picked up printed copies of his resume from a printing office near the Gingerbread Man Bar. He stated he is job hunting and does not need any investigation with him at this time as it would prevent him from getting job.

At the Sheriff's Dept. Broomfield was given a polygraph examination by Lt. Max Skeens. It was Skeens' conclusion that Broomfield was being truthful about not being involved in the fire or knowing who did set the fire.

Writer then discussed again the events of the night prior to the fire. Broomfield admitted being quite intoxicated but was sure when they left the restaurant Mr. & Mrs. Addison and he left at the same moment out the north lounge door.

The rest of his information was same account as given in earlier interview with him.

1500 hours

Writer telephoned the Holiday Inn in Osprey, requesting information about the band Primetime. Writer was advised this group has disbanded. The band leader was the drummer named Vince Cervera who lives in Sarasota. However, Cervera is believed to be in Houston at this time playing for another band.

1510 hours

Writer checked telephone book for Vince Cervera, showing a listing at 2524 Sunnyside St., 366-5136. Writer telephoned this number and was advised Vince is now in Houston and will return next week.

1700 hours

Writer served Instanter subpoena at Accounting Associates, 6621 Superior Ave. for records relating to

Glados restaurant. This is the accounting firm that has handled the accounting and tax records for Glados since its opening for business. Writer reviewed Glados records with employee Linda Loewenstern. Due to the large number of documents, copies were provided for Writer.

Loewenstern knows that Mr. Addison got his insurance binder and read it. He though he had $20,000 coverage for disruption of business, instead of $10,000. Also, after the fire he had a check written to him for salary. Prior to this neither Mr. & Mrs. Addison had claimed a salary.

2/8/83 - 1015 hours

Attorney Roger Wolfe returned Writer's call. He will check with Mrs. Addison to determine if her position is still one of allowing no interview with Writer.

1030 hours

Writer received transcripts from David Irons (Reliance Insurance Co.) interview of Mr. & Mrs. Addison with Attorney Roger Wolfe present. This interview took place 1/18/83 during the morning (see enclosed transcripts for detailed account of interview).

2/8/83 - 1120 hours

Writer served Instanter subpoena at Gulf Coast National Bank. 6525 S. Tamiami Trail for the records relating to Glados Restaurant. Copies of these records were made available to Writer (see enclosed bank records).

2/28/83 -1430 hours

Kelsie Moore, customer relations manager of the Eli Witt Vending Division, 1213 44th Ave. E., "L", P.O. Box 7??, Brandenton came into office without appointment to talk with Writer. His telephone number is 747-1257.

Mr Moore explained that his company has 3 vending machines inside Glados Restaurant. As it now appears the restaurant is not reopening he wished to know how to contact the owner to make arrangements to get his machines out.

He advised he was not surprised the fire occurred as the business had been doing so poorly, especially considering the amount of money that had been poured into it.

Moore states he collected little money from the vending machines there. Those machine accounted for little income as business was so bad. The machines he had there were a cigarette machine, a juke box and a Ms. Pac Man. Moore volunteered to give Writer a week by week account of the money taken from these machines. The money intake fluctuation can be used as an indicator of the restaurant's business. He will get back in touch with Writer when he is able to make the week by week account.

Writer instructed Moore to contact Roger Wolfe regarding the acquisition of his machines from the restaurant.

1515 hours

Writer spoke by telephone with Vince Cervera, 366-5136. He agreed to stop by Sheriff's Dept. in the morning for an interview. He was not advised of the topic to be discussed.

3/1/83 - 1000 hours

Writer interviewed Vince Cervera, W/M, 8/??/51 at the Sheriff's Dept. He and his musical band, Free Spirit, became acquainted with Glados restaurant and its owners after being booked to play there before through a booking agent, Ron Trudeau. Free Spirit played at Glados for four (4) weeks in November. They were scheduled also for the last two weeks of December with the last night being New Year's Eve.

On Thursday night (before the fire on Friday morning) the bar was slow so the band stopped playing at approx. 2330 hrs. Cervera states he sat and talked with Mr. & Mrs. Addison at the bar from approx. 2330 - 0130 hrs. Cervera recalls the Addisons were drinking heavily as was their custom.

On this evening Cervera felt it odd the Addisons spent so much time talking to him. They had never been so talkative before. He recalls he sensed something was different. Often in the past they had discussed how poorly the business was doing but on this night Mr. Addison had a "so what" who cares" attitude that business was not doing well.

In describing the Addisons, Cervera stated they were very "weird" people to get to know. One day they would treat you very nice, polite and friendly. Then suddenly the next day they might completely ignore you. He stated they were very hard to figure out.

He also noted Addison seemed to "talk too much" about things regarding business, etc. that he (Cervera) had no business hearing. Addison talked to him about the gas stations in Michigan and how much money he an his wife had, as well as how wealthy their parents were.

On one occasion Mr. Addison told Cervera that he had a bunch of good attornies and referred to them as "a bunch of crooks that could get him out of anything".

Talking about Mrs. Addison, Cervera states that drinking alcohol greatly changes her personality. He has observed when she is drinking that she will hold and kiss other men and allow them to "grab" her when Mr. Addison is not around. However, he personally has not seen them argue or fight.

Cervera states that he felt it poor business for Mrs. Addison to behave the way she does, sighting her excessive drinking, talking and having even seen her passed out on a table in the bar.

Cervera, although no longer with the band, Free Spirit, still is in contact with the members. They tell him they have seen Mrs. Addison on several occasions with different men at O'Leary's Bar in Gulf Gate. She came and left with these men but Mr. Addison was not present.

Cervera recalled on one occasion he was talking with the girl that works at La Marsala Restaurant. The topic of Glados Restaurant came up and she said "well you know they won't be open much longer. They are going to close." Cervera noted that Addison used to "hang out" alot a La Marsala and he felt this girl (he did not

know her name) and Mr. Addison were "very friendly". This conversation took place a period of time prior to the fire.

Writer's note: the notion that Mr. Addison was friends with the people and hung out at La Marsala Restaurant (7253 S. Tamiami Trl.) was confirmed also in earlier interviews with Mr. Addison and Frank Broomfield.

Cervera ended the interview by saying that and the band members often see Mrs. Addison in Mrs. O'Leary's bar, he will talk with them to see if they have heard any statements or information that may be valuable.

3/23/83

Writer received in the mail from Kelsie Moore, the receipts of the vending machines in Glados Restaurant (as this may be considered an indicator of the business being done). See enclosed report from the Eli Witt vending division.

3/29/83

Writer telephoned the home of Vince Cervera to find out if he has learned any additional information. Writer was told Cervera is in Miami and will not return for 3 or 4 weeks.

SUMMARY

Although no accelerants could be detected by fire investigator Coggan, the cause of this fire is believed to be arson. There are baseboard burns on opposite sides

of the room that should no appear in an accidental fire situation.

This fire caused heavy damage to the office and part of the kitchen area. Fire burned though the roof above the office. It was first heard on Sonitrol monitor as owner, Bill Addison was leaving the building. This fire only had from approx. 0425 to 0439 hrs. to build and cause such great damage. It is felt no accidental fire in this neatly kept office could have spread so fast, gotten so hot and caused such damage in 14 minutes had arson not been involved. Electrical wiring was definitely ruled out as a cause of fire.

It is known that business was so bad at the restaurant that it was costing the owner approx. $30,000 per month in the red to stay in business. Addison was under the impression that if business was disrupted he would make 20,000 per month from insurance (he later learned the policy provided for only one-half that figure for disruption of businesses).

Everyone in this investigation has been cooperative except Mr.& Mrs. Addison who felt in necessary to leave for Michigan soon after the fire. Upon their return they felt it necessary to have an attorney represent them even before Writer met with either. Mr. Addison was interviewed with his attorney present. He refused to take a polygraph examination. Writer was then denied an interview with Mrs. Addison on the basis that she is still too upset over the fire.

Writer notes the taped interview with bookkeeper Missy White to contain numerous points of suspicious circumstances leading up to and after the fire that

circumstantially show Addison's motive and planning to burn the restaurant.

Writer does feel there is great circumstantial evidence to indicate that Bill Addison did set fire to Glados Restaurant. However, there lacks enough evidence to support a charge and conviction in this matter. (Although in great amount, all evidence is circumstantial).

This case will be considered exceptionally cleared as the conclusion of this investigation is that the owner Bill Addison did set fire to the restaurant, based on information listed throughout this report.

However, a criminal charge will not be filed at this time, pending additional information or evidence that could result in a conviction at trial.

EXCEPTIONALLY CLEARED

OTHER FEDERAL CIRCUIT CASES INTERPRETING RULE 803 (8)(C)

First Circuit: *Robbins v. Whelan*, 653 F. 2d 47 (1st Cir.), cert. denied sub nom., *Whelan v. Robbins*, 454 US 1123 (1981) (National Highway Safety Bureau report on stopping distances).

Second Circuit: *Miller v. New York Produce Exchange*, 550 F. 2d 762 (2d Cir.), cert. denied, 434 US 823 *Systems v. American Tel. & Tel. Co.*, 700 F. 2d 785 (2d ICir. 1983), cert. denied, 104 S. Ct 984 (1984) (FCC decisions on tariffs); *FAA v. Landy*, 705 F. 2d 624 (2d Cir.), cert. denied, 104 S. Ct. 243 (1983) (German government telex incorporated into FAA report).

Third Circuit: *Melville v. American Home Assurance Co.*, 584 F. 2d 1306 (3d Cir. 1978) (FAA airworthiness directives); *Lloyd v. American Export Lines, Inc.*, 580 F. 2d 1179 (3d Cir.), cert. denied, 439 US 968 (1978) (administrative hearing transcript and findings of fight between two seamen).

Fourth Circuit: *Ellis v. /International Playtex, Inc.*, 745 F. 2d 292 (4th Cir. 1984) (toxic shock syndrome report).

Fifth Circuit: *In re Plywood Antitrust Litigation*, 655 F. 2d (5th Cir. 1981) (administrative law judges findings, adopted by FTC); *Local Union No. 59 v. Namco Elec., Inc.*, 653 F. 2 d 143 (5th Cir. 1981) (NCRB findings); *Falcon v. General Tel. Co.*, 626 F. 2d 369 (5th Cir.) rev'd on other grounds, 457 US 147 (1982) (hearing examiner's findings of fact, but not opinions and conclusions); *Garcia v. Gloor*, 609 F. 2d 156 (5th Cir. 1980) (EEOC findings); *Marks v. Prattco*, Inc., 607 F. 2d 1153 (5th Cir. 1979) (information sheets completed by defendant and kept in

EEOC file; should have come in as nonhearsay admissions); *Hodge v Seiler*, 558 F. 2d 284 (5th Cir. 1977) (HUD report).

Sixth Circuit: *In re Paduca Towing Co.*, 692 F. 2d 412 (6th Cir. 1982) (hearing examiner's report that towboat was properly moored); *United States v. School District of Ferndale*, 577 F. 2d 1339 (6th Cir. 1978) (HEW hearing examiner's findings).

Seventh Circuit: *Cohen v. Illinois Institute of Technology*, 524 F. 2d 818, 822 n. 4 (7th Cir. 1975), cert. denied, 425 US 943 (1976) (dictum) (HEW report of gender discrimination "may be admissible"). *Eighth Circuit: Roth v. Black & Decker, Inc.*, 7737 F. 2d 779 (8th Cir. 1984) (Consumer Products Safety Commission report); *Kehm v. Proctor Gamble Mfg. Co.*, 724 F. 2d 613 (8th Cir. 1983) (another toxic shock syndrome reports case).

Ninth Circuit: *Plummer v. Western Int'l Hotels Co.*, 656 F. 2d 502 (9th Cir. 1981) (making EEOC findings per se admissible); *United States v. Sims*, 617 F. 2d 1371 (9th Cir. 1980) (Dictum) (witness's statement in FBI report may be admissible).

Tenth Circuit: *Blim v. Western Elec. Co.*, 731 F. 2d 1473 (10th Cir. 1984); *Crane v. Mekelberg*, 728 F. 2d 439 (10th Cir. 1984) (blood alcohol test report).

Eleventh Circuit: *Fowler v. Blue Bell, Inc.*, 737 F. 2d 1107 (11th Cir. 1984) (admitting also affidavits supporting EEOC findings - on a nonhearsay basis).

District of Columbia Circuit: *United States v. Smith*, 521 F. 2d 597 (DC Cir. 1975) (dictum) (accused's offer of police report should be admissible).

Federal Circuit: *Skaw v. United States*, 740 F. 2d 932 (1984) (Secretary of Agriculture's report of mineral deposits); *Parker v. Califano*, 561 F. 2d 320 (DC Cir. 1977) (administrative record admissible at Title VII trial); *Hackley v. Roudebush*, 520 F. 2d 108 (DC Cir. 1975) (arbitrator's Title VII findings).

Supreme Court, U.S.
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(2)

No. 87 - 1630

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1987

RELIANCE INSURANCE COMPANY,
Petitioner,

vs.

GLADOS, INC.,
a Florida corporation,
Respondent.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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POINTS FOR REVIEW

I. EVEN IF RAINEY v. BEECH AIRCRAFT CORPORATION CONFLICTS WITH DECISIONS OF OTHER FEDERAL CIRCUITS, THE HOLDING SUB JUDICE DOES NOT.

The Eleventh Circuit Court of Appeals' holding below states:

> "We need not decide whether Detective Albritton's conclusion regarding the fire would be a 'factual finding' under a liberal reading of Fed. R. Civ. P. 803(8)(C)* because binding precedent in this circuit takes a restrictive approach to that hearsay exception. See Rainey v.Beech Aircraft Corp., 784 F.2d 1523, 1528 (11th Cir.) . . ."

And while it can be argued that Rainey, supra, and Smith v.Ithaca Corp., 612F.2d 215 (5th Cir. 1980) may clash with decisions of other federal circuits with regard to the breadth of Federal Rule of Evidence 803(8)(C)'s application to official reports, the decision of the Eleventh Circuit Court of Appeals sub judice certainly does not conflict with any federal appellate decisions cited by Petitioner at pages 36-37 of its petition.

A. The investigative report in question.

The court should first review Detective Allbritton's lengthy written report at Appendix pages 11-35. The following excerpts ought to be given special attention, because they contain opinions as to who caused the subject fire, hearsay and double hearsay:

At the first page (App. 11), William Addison, a principal

*The court obviously meant to refer to Federal Rule of Evidence 803(8)(C).

officer and general manager of Respondent/insured, is identified as the only suspect in this arson investigation. This is Allbritton's opinion on guilt.

At page 11 of the report (App. 20), Allbritton states that he was told by Coggan (a fire official), that Lacy (another fire official) overheard Gladys Addison (president of Respondent/insured) saying she had passed a polygraph test. This is double hearsay.

At page 13 of the report (App. 22), Allbritton states that he was told by Missy White (a former employee of Respondent/insured who testified at trial) that she suspected William Addison had intentionally set the subject fire. This is hearsay and an opinion on guilt.

At pages 14 and 15 of the report (App. 22 and 23), Paige Watson, (a former employee of Respondent/insured) is quoted as saying that the Addisons (principals of Respondent/insured) were "strange people" and that she had an opinion that William Addison set the subject fire. Ms. Watson is then quoted on statements she has heard first-hand and second-hand from other persons, regarding the Addisons and their restaurant business. This section contains hearsay, double hearsay, triple hearsay and opinions on guilt.

At page 18 of the report (App. 25), Sharon Taylor (a former employee of Respondent/insured) is quoted by Allbritton on her first-hand observations and also on what she has been told by others. This is hearsay and double hearsay.

At page 25 of the report (App. 31), quotes Kelsie Moore, a vending machine operator who placed machines at the Respondent/insured's restaurant, as not being "surprised" that the restaurant burned since business was so bad. This is

hearsay and also an opinion that Respondent/insured's principals burned their own business because they weren't making money.

Vince Cervera, a member of the band playing at Respondent/insured's restaurant the week of the fire, is quoted at pages 26-27 of Allbritton's report (App. 32-33) as having opinions that the Addisons were "weird" and that Mrs. Addison's morals were loose when she drank. Cervera is also quoted as saying that he'd been toldby others that Mrs. Addison was dating other men behind her husband's back. This section contains hearsay and double hearsay, and opinion about the believeabilty and character of the Addisons.

At the end of his report (App. 34-35), Allbritton says:

> "Writer does feel that there is great circumstanial evidence to indicate that Bill Addison did set fire to Glados Restaurant. However, there lacks enough evidence to support a charge and conviction in this matter. (Although in great amount, all evidence is circumstantial.)
>
> "This case will be considered exceptionally cleared as the conclusion of this investigation is that the owner Bill Addison did set fire to the restaurant, based on information listed throughout this report."

B. The investigative report is laced with hearsay

Rule 803(8)(C) simply permits introduction into evidence of factual findings set forth in an official, investigative report, without the necessity of have the fact-finder come into court and testify as to the facts he observed or the results of his testing. It does not create an open door through which all forms of hearsay set forth in the report itself can be admitted

into evidence at a civil trial. The principle was recognized in Miller v. Caterpillar Tractor Co., 697 F.2d 141 (6th Cir. 1983), wherein a police report was ruled inadmissible because it relied upon hearsay statements of witnesses. Similar rulings are found in U.S.v.Brown, 548 F.2d 1194 (5th Cir. 1977) and John McShain, Inc. v .Cessna Aircraft Co., 563 F.2d 632 (3rd Cir. 1977).

After stating that "one of the most controversial exceptions to the hearsay rule is section 'C' of Rule 803(8)," the court in Fraley v. Rockwell Int'l Corp., 470 F.Supp. 1264, 1266 (S.D. Ohio 1979) stated that "the declarant must have had first hand knowledge of the matter asserted."

In the instant action, the Allbritton report's "declarant" is Allbritton himself — not the persons he is quoting. The report is his out-of-court statement which is made admissible by Rule 803(8)(C). But Rule 803(8)(C does not obviate the problem of the hearsay within the report.

Petitioner's argument to the contrary, note (c) to exception (8) of Rule 803 of the Federal Rules of Evidence, of the Notes of Advisory Committee on Proposed Rules states:

> "Police reports have generally been excluded except to the extent to which they incorporate first hand observations of the officer." (Emphasis supplied.)

C. The investigative report is laced with opinions of guilt on the part of Respondent's principals and about their character.

Albritton's report contains express opinions of himself, Paige Watson, and Missy White that William Addison was guilty of intentionally burning Glados Restaurant. Kelsie

Moore is also quoted as saying she is not "surprised" that the restaurant burned, as it was doing such poor business, clearly implying that the Addisons arsoned the business.

Cervera and Watson are quoted as saying that the Addisons were "weird" or "strange" people, and that Mrs. Addison was dating other men behind her husband's back.

Had any of the above statements been solicited by Petitioner at trial through live appearance of these witnesses, the testimony would have been inadmissible.

1. Opinions about guilt of arson.

It is not proper to ask a witness a question which requires the witness to state a conclusion of law about legal responsibility for an accident which is at issue. Matthews v. Ashland Chemical, Inc., 770 F.2d 1303, 1310 (5th Cir. 1985). And while an arson investigator may, if qualified, express opinions on the cause of a fire, he cannot state whether or not someone has been charged with arson, nor can he state whether he possesses evidence which implicates the insured, when the insuror pleads arson as a defense. Ojat v. State Farm Fire & Cas. Co., 542 F.Supp. 1321 (W.D. Pa. 1982).

Despite Federal Rule of Evidence 704, which states:

> "[T]estimony in the form of opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact;"

this rule does not open the door to all opinions. The rule does not permit a witness to express legal conclusions. Haney v.Mizell Memorial Hospital, 744 F.2d 1467, 1473 (11th Cir.

1984). Or, as put another way in Owen v. Kerr-McGee Corp., 698 F.2d 236, 239-40 (5th Cir. 1983):

> "The Advisory Committee notes make it clear that questions which would merely allow the witness to tell the jury what result to reach are not permitted. Nor is the rule intended to allow a witness to give legal conclusions." 698 F.2d at 240.

And footnote 8 of the Haney decision also notes:

> "The abolition of the ultimate issue rule does not lower the bars as to admit all opinions. Under Rules 701 and 702, opinions must be helpful to the trier of fact, and Rule 403 provides for the exclusion of evidence which wastes time. These provisions afford ample assurances against the admission of opinions which would merely tell the jury what result to reach." 744 F.2d at 1474.

2. Opinions about character of the Addisons:

Federal Rule of Evidence 404 provides that evidence of a person's characters is not admissible in a civil action, except as allowed under Rules 607, 608 and 609.

Since "impeachment by evidence of conviction of crime" is not involved sub judice, it is only Rule 608 which needs be addressed. And under Rule 608, evidence of a witness' character may only relate to his/her "character for truthfulness or untruthfulness." How could evidence of the Addisons' being "weird", "strange" or lacking in sexual fidelity relate to their "character for truthfulness or untruthfulness ?"

The trial judge sub judice certainly did not find such evidence to be probative.

D. Rule 803 (8) (C) does not Convert all Inadmissible Testimony into Admissible Evidence

Caselaw cited by Petitioner at pages 36-37 of its Appendix bears careful review to understand just how limited the scope of Rule 803(8)(C) is. The rule does not suddenly convert inadmissible evidence into admissible evidence by including the testimony in a government agency report. The rule only removes a hearsay objection to the failure of the report's author to appear and give live testimony as to his factual findings.

1. Rule 803 (8) (C) is limited to "factual findings" based upon highly reliable data.

In his special concurrence in Rainey v. Beech Aircraft Corp., 784 F.2d 1523 (11th Cir. 1986), Judge Johnson felt that the 11th Circuit's restrictive application of Rule 803(8)(C) was an "anomaly" among the Circuit Courts of Appeal, and mentioned the decision in Ellis v. International Playtex, Inc., 745 F.2d 292, 301 (4th Cir. 1984), as an example of the majority view, allowing certain types of opinions in government reports to be admitted into evidence under Rule 803(8)(C).

But the Ellis case involved a toxic shock syndrome claim. The plaintiff there sought to introduce into evidence a report from the U.S. Center for Disease Control which contained scientific studies resulting in both "statistical findings" and "tentative conclusions." The Ellis court found that the CDC report was based upon reliable data from an unbiased source. A similar holding was made in Kehm v. Proctor & Gamble Mfg. Co., 724 F.2d 613 (8th Cir. 1983), also a toxic shock syndrome case.

Both the Ellis and Kehm decisions are cited in Petitioner's Appendix as decisions conflicting with the holding sub judice, but there is a major difference between scientific conclusions reached by researchers, based upon empirical data, and a sheriff's investigator's opinion that Mr. Addison is guilty of arson because his bookkeeper says so!

2. The "factual findings" in a report should be be made by an unbiased fact-finder.

Petitioners attempted to bootstrap into evidence testimony which was highly prejudicial, unreliable, and lacked probative value, by arguing that it was part of a "factual finding" set forth in a government agency's investigative report.

As noted at page 7 of the petition filed herein, the Advisory Committee Notes on Rule 803(8)(C) contained four factors to be considered when determining a government report's "trustworthiness." Included in these four factors was a question as to "whether a hearing was held on the level at which conducted."

Reviewing the federal circuit decisions cited by petitioner at pages 36-37 of its petition, this court can see that those not relating to reports based on scientific data (blood tests, toxic shock syndrome, vehicle stopping distances, etc.) were decisions allowing admission into evidence of reports from agencies following administrative hearings (EEOC, maritime, FAA, etc.), where both sides on an issue have presented their cases to an unbiased fact-finder.

But there was no administrative hearing prior to issuance of the Albritton report, nor was a disinterested fact-finder charged responsible for reaching the conclusion at the end of the report. In short, Albritton's report is his opinion, based

upon the opinions of people who didn't like the Addisons.

E. Conclusion on the Albritton Report

Rule 803(8)(C) of the Federal Evidence Code will not convert inadmissible opinion evidence, character evidence, or double hearsay, into admissible evidence, simply because objectionable evidence is recorded in the body of a criminal investigator's report.

II. THE ELEVENTH CIRCUIT COURT OF APPEALS CORRECTLY AFFIRMED THE TRIAL COURT'S REJECTION OF PETITIONER'S "COOPERATION CLAUSE" DEFENSE.

A. Factual basis for the lower courts' rulings

Review of the decision of the Eleventh Circuit Court of Appeals below (Appendix p. 7) addresses the "cooperation clause" defense raised by petitioner succinctly:

> "RELIANCE concedes that the Addisons complied with the requests that they allow it to examine the corporate documents and records for Glados. It contends, however, that because Glados was wholly owned by Gladys Addison, the personal financial records of the Addisons were highly relevant to Reliance's arson defense and were covered by the cooperation clause. We disagree. The insurance policy is between RELIANCE and GLADOS, INC., a corporation. The language of the cooperation clause is unambiguous, and requires only the 'Named Insured' to provide relevant documents to RELIANCE. Under the terms of this policy, we cannot conclude that the Addisons were obligated to provide their personal records."

There is no question that GLADOS, INC. provided every document requested from it by petitioner under the cooperation clause. Petitioner only complains that the Addisons refused to voluntarily provide their personal financial records.

B. Florida Law Regarding Policy Defenses

Petitioner's "cooperation clause" defense is one based entirely upon the contract between petitioner and its insured and, as such, is an affirmative defense under the insuror's policy. The burden of proof is upon the insuror and the insured is not required to prove compliance as a prerequisite to recovery of policy proceeds. W.J.Kiely & Co. v. Bituminous Cas. Corp., 145 So.2d 762 (Fla. 3rd DCA 1962).

Under Florida law, any ambiguity existing in an insurance policy will be construed in the light most favorable to the insured. National Merchandise v. United Serv. Auto Assn., 400 So.2d 526 (Fla. 3rd DCA 1981; Fireman's Fund Insurance Co. v. Boyd, 45 So.2d 499 (Fla. 1951). And where there is no ambiguity, language used in the policy will control. Electron Mach. Corp. v. American Mercury Ins. Co., 297 F.2d 212 (5th Cir. 1961).

As noted by the Eleventh Circuit Court of Appeals in its remarks quoted above, there was nothing ambiguous about the "cooperation clause" in petitioner's policy. It simply provided that the "Named Insured" produce its records — not anyone else's records.

C. Petitioner's Burden with regard to its "cooperation clause" defense.

Under Rule 17.1(a) of the the U.S. Supreme Court Rules, this court will not grant a review on a writ of certiorari on an

issue of purely state law unless a federal court of appeals "has decided a federal question in a way in conflict with a state court of last resort."

This court should carefully review the authorities cited by petitioner in its second point for review, as this will reveal not one decision from any jurisdiction which has denied a corporate insured fire coverage because its principals refused to voluntarily produce their personal financial records demanded by the corporation's insuror.

In each case cited by petitioner, from Florida or otherwise, it has been the named insured that has refused production of its own financial records.

Because petitioner clearly cannot establish that the lower court's opinion directly conflicts with an opinion of the Florida Supreme Court (Florida's court of last resort), this court should summarily deny review on writ of certiorari on petitioner's "cooperation clause" defense.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing have been furnished by U.S. Mail to W. Lane Neilson, Esquire, NEILSON & ASSOCIATES, 135 W. Central Boulevard, Suite 200, Orlando, FL 32801 on this 14 day of ~~March~~ APRIL, 1988.

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